Amendments to the Drawings:

The attached sheet of drawings includes changes to FIG. 3. This sheet, replaces the original sheet including FIG. 3.

Attachment: Replacement sheet

Remarks/Arguments:

The present application has been reviewed in light of the Office Action mailed September 14, 2007. Claims 1, 5-10, and 13-20 are currently pending in this application. By the present amendment, applicants have amended Claims 1, 5, 8, and 17. In addition, Claims 2-4, 11 and 12 have been canceled. Reconsideration of the present application is respectfully requested.

The drawings have been objected to under 37 CFR 1.83(a) as failing to show every feature of the invention specified in Claims 11 and 12. In response to this objection, FIG. 3 has been amended to include a schematic representation of a motorized mechanism recited in Claims 11 and 12. Clear support for this amendment to FIG. 3 can be found on page 14, lines 15-20 of the specification as originally filed and in originally filed Claims 11 and 12. More specifically, on page 14, lines 15 and 16, for example, the specification recites that "It is further envisioned that the input action to store energy may be motor driven." It is respectfully submitted that FIG. 3 as amended does not include any new matter. It is also respectfully submitted that the schematic representation of the motor and power supply satisfies the requirements of 37 CFR 1.83(a) with respect to the mounting structure recited generally and specifically in Claims 11 and 12.

The specification has been objected to for containing informalities. The specification has been amended herein in a manner which is believed to overcome these informalities. More specifically, the paragraph beginning at page 11, line 4 has

been amended to change "328" to --338-- as suggested by the Examiner. Accordingly, in view of the amendments made to the specification herein, it is respectfully submitted that the objections to the specification have been overcome.

In Office Action mailed September 14, 2007, Claims 1-3, 5-7, 9, 11-12, and 17-20 were rejected under 35 U.S.C. 102(b) over U.S. Patent No. 5,645,209 to Green et al. (hereinafter, "Green") and Claims 1 and 10 were rejected under 35 U.S.C. 102(b) over U.S. Patent No. 5,098,004 to Kerrigan (hereinafter "Kerrigan"). Applicants gratefully acknowledge that the Examiner also indicated that Claims 4 and 8 would be allowable if rewritten in independent form and that Claims 13-16 are allowable.

Applicants have amended Claim 1 to include the elements of Claims 2-4. Thus, Claim 4 has been rewritten in independent form as amended Claim 1. Accordingly, Applicants believe that Claim 1 and Claims 5-7, 9, and 10 which depend from Claim 1 are patentable over Green and Kerrigan and are in condition for allowance. Applicants have also rewritten Claim 8 in independent form. Accordingly, Applicants believe that Claim 8 is patentable over Green and Kerrigan and is in condition for allowance.

With respect to the rejections of Claims 17-20 over Green, the Examiner states the following:

> Green discloses the same invention including a handle (Fig. 91) having an elongate tubular member, an end effector, a driver 1042, an energy storage mechanism (Fig. 94), and an actuation mechanism to control the rate of release of the stored energy. The energy storage mechanism includes a spring 1057 and a piston 1023 having a piston rod as can be seen in the figures. An energizing handle 1020 is mounted on the handle and compresses the spring 1057. The actuation

mechanism includes a fluid and a valve 1027 to control the flow of the fluid. Note that the pneumatic system is considered a motorized mechanism as it imparts motion to the driver and is a damping system since the amount of force on the trigger controls the rate of release of the stored energy. In addition, note that the actuation mechanism includes a brake system such as the linkages shown in Fig. 94 as the device cannot release energy unless the linkages are forced against their biased directions."

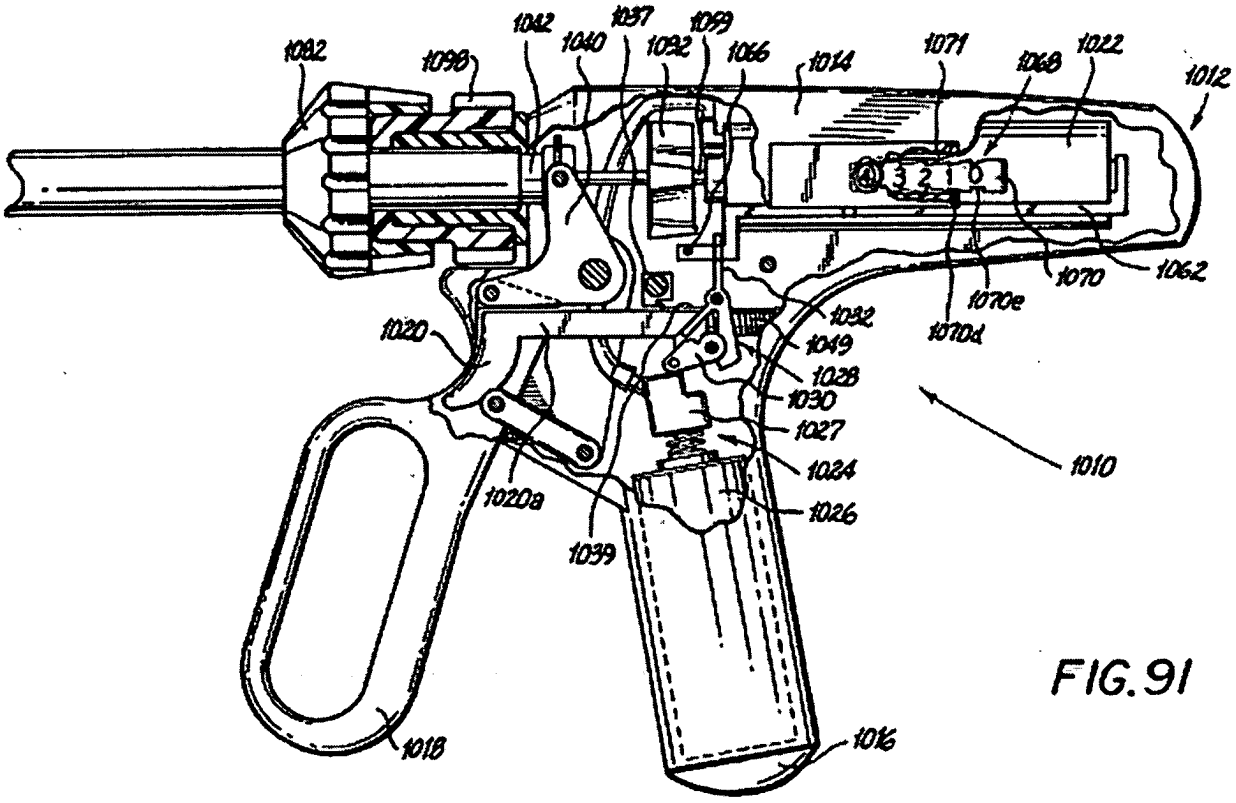

FIG. 91

Independent Claim 17 presently recites, a surgical instrument for driving an end effector comprising: a handle having an elongate tubular member extending from the distal end of the handle; a driver movable within the elongate tubular member and operable on an end effector; an energy storage mechanism, comprising a spring and a fluid in a cylinder, at least partially positioned within the handle and operable on the driver to move the driver within the elongate tubular member; and an actuation mechanism,

comprising a valve, operable on the energy storage mechanism to control the rate of release of the energy ***stored in the spring of the energy storage mechanism***.

Green describes a self contained gas powered endoscopic surgical apparatus provided for placing lateral lines of surgical fasteners into body tissue. Green provides that when the piston has completed its stroke, as shown for example in FIG. 95 reproduced below, a stem 1060, which extends proximally from the piston 1023, will interact with an outwardly depending portion 1063 of a release shaft 1062 and will urge the release shaft 1062 in a proximal direction. Release shaft 1062 includes a depending distal portion 1064 from which extends a transverse detent 1066. Detent 1066 is dimensioned and configured to interfere with the latching link 1032 and cause the disengagement of the latching link 1032 and the rocker link 1030 after the apparatus 1010 has been actuated. Col. 37, Lines 50 – 60.

FIG.95

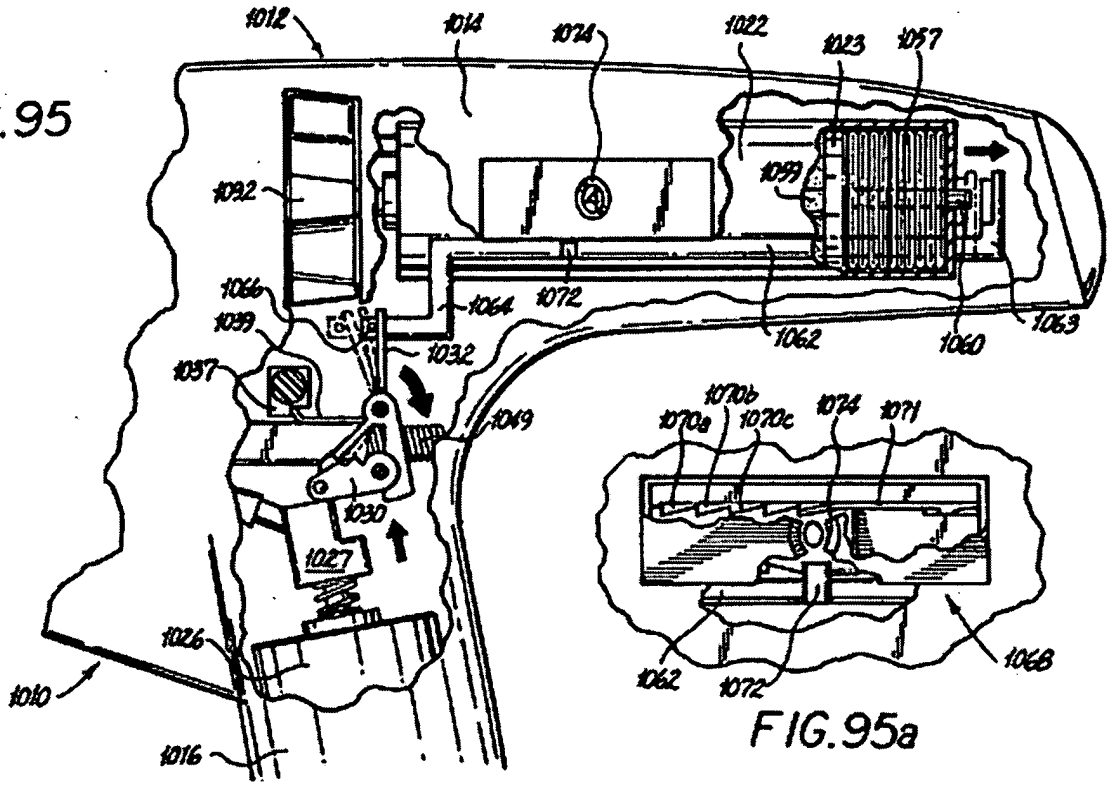

FIG.95a

Green does not teach, suggest, or disclose the instrument as recited in amended Claim 17. More specifically, Green provides no guidance or motivation for one skilled in the art to include an actuation mechanism ***comprising a valve*** wherein the valve is operable to control the rate of release of the energy ***stored in the spring of the energy storage mechanism.*** For this reason, Applicants believe that Claim 17 is patentable over Green and is in condition for allowance.

In view of the foregoing remarks, it is respectfully submitted that all claims pending in this application are in condition for allowance. Should the Examiner believe that a telephone interview may facilitate resolution of any outstanding issues, the Examiner is respectfully requested to telephone Applicants' undersigned attorney at the

number indicated below. An early and favorable response in the merits is earnestly solicited.

Respectfully submitted,

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